IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9842 of 1992
With
SPECIAL CIVIL APPLICATION No. 1327 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASMATBHAI SHAMJIBHAI SORATHIA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR HARIN P RAVAL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/09/2005

ORAL JUDGMENT

1.In both these petitions, the respective petitioners have challenged the legality and validity of the orders

passed by the Assistant Collector, Morbi dated 25-7-1991 and 23-10-91 with regard to the land in question, which was originally owned by the respondent no.4 herein Dahyabhai Kanabhai.

2. The land in question bearing survey No.479 paiki situated at village Kgadadi, Tal:Morbi, Dist: Rajkot, which was owned by the original respondent No.4 herein i.e. Dahyabhai Kanabhai and the part of the land came to be sold to the respondent Nos.2 and 3. The respective petitioners claim that they have purchased the land in question from the subsequent purchaser i.e. respondent Nos.2 and 3 by registered sale deed. After they purchased the land in question, mutation entry Nos.3409 and 3410 by which names of the respondent Nos.2 and 3 were mutated in the Revenue Record on the basis of the sale transaction in their favour came to be challenged by way of suo motu revision by the Asst. Collector, Morbi and the Asst. Collector by its order dated 25-7-91 set aside the aforesaid two entries, which were in favour of the respondent Nos.2 and 3 by holding that they were not agriculturist, where they purchased the land in question. Simultaneously, the Asst. Collector, Morbi also initiated the proceedings for declaring the aforesaid sale transaction in favour

of the respondent Nos.2 and 3 as invalid and in breach of provision of Saurashtra Gharkhed Tenancy Settlement & Agricultural Lands Ordinance, 1949 and the Asst. Collector, Morbi by its impugned judgment and order dated 23rd October, 1991 passed an order resuming the land to the State Government and directing the respondents to be evicted from the land in question. Being aggrieved by and dissatisfied with the aforesaid orders passed by the Asst. Collector, Morbi, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. It appears from the record that in the mean time, the respondent Nos.2 to 4 had preferred Appeal Nos.42/92, 49/92 and 56/92 before the Collector, Rajkot challenging the order passed by the Asst. Collector, Morbi dated 25-7-91 as well as 23-10-91 and the Collector Rajkot by its common judgment and order dated 3-9-1992 has dismissed all the three appeals. It is reported that against the aforesaid common order passed by the Collector, Rajkot dated 3-9-92, the respondent No.4 herein - original land owner Dahyabhai Kanabhai has approached the Addl. Chief Secretary (Appeals) Revenue Department, State of Gujarat by way of Revision

Application No.1/92 and the said revision application is pending for final disposal before the Secretary (Appeals). In the said revision application, the order passed by the Collector, Rajkot dated 3-9-92 in confirming the order passed by the Asst. Collector, Morbi dated 25-7-91 and 23-10-91, which is challenged in the present Special Civil Application is at large before him.

4. Under the circumstances and also in view of the fact that the petitioners have also an alternative statutory remedy available by way of preferring revision application before the Secretary (Appeals) and more particularly in view of the fact that the aforesaid revision application No.1/92 is pending before the Addl. Chief Secretary (Appeals), without deciding the present Special Civil Application on merits, the petitioners are relegated to file revision application before the Secretary (Appeals) challenging the order, which are challenged in the present Special Civil Application along with the application for condonation of delay and if the revision applications are filed within a period of twelve weeks from today, the Addl. Chief Secretary (Appeals) is directed to condone the delay and decide and dispose of the said revision

application on merits along with the revision application No.1/92, which is filed by the respondent No.4 herein – original land owner Dahyabhai Kanabhai in which he has challenged the order passed by the Collector, Rajkot dated 3-9-92. The Addl. Chief Secretary is directed to decide and dispose of the revision application No.1/92 as well as two revision applications to be filed by the respective petitioners as stated above as early as possible preferably within a period of 6 months from today on receipt of this order, until then parties are directed to maintain status quo.

5. With the above observations and directions, the present Special Civil Applications are disposed of accordingly. Rule is discharged. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-